In the Supreme Court
OF THE
United States

OCTOBER TERM, 1948

No. 177

J. R. MASON,
Petitioner,
vs.
PARADISE IRRIGATION DISTRICT,
Respondent.

PETITION FOR A REHEARING.

To the Honorable Fred M. Vinson, Chief Justice of the United States, and to the Honorable Associate Justices of the Supreme Court of the United States:

Comes now J. R. Mason, respectfully requesting a rehearing in the above entitled cause, upon the grounds presented in the Petition for a Writ of Certiorari, Brief and Reply Brief and for the following reasons in support of those constitutional grounds.

Although it is as owner and holder of valid, binding and unpaid statutory trust claims that petitioner,

who is not a member of the bar, is afforded a standing in this Court, his interest and concern as a citizen of this Constitutional Republic, and student of fundamental economics, sociological and political principles far outweighs the pecuniary gain or loss he will experience by this proceeding.

The crucial constitutional points presented in the Petition, at pages 7, 8 and 9, and the failure by respondent to deny that the final decree as applied by the Court below impairs vested property rights secured by both the Constitutions of the United States and of California, plus the failure of respondent to deny or comment upon the points listed in petitioner's reply brief at pages 2, 3 and 4, are an integral reason for presenting this rehearing petition.

The final decree, as applied by the Court below not only allows the State of California to impair its statutory obligation owned by petitioner, but it also has the force and effect, as applied of "interfering" with the exercise of the sovereign power of the State of California to "rest taxation upon the value of land, irrespective of improvements", and thus contravenes a very long line of decisions by this Court both before and since the *U. S. v. Bekins* case, 304 US 27, uniformly affirming the fundamental principle that the sovereign power of a state, and its political subdivisions to borrow money, when exercised, is a power which may not be interfered with by the United States.

In *McCulloch v. Maryland Bank,* 4 Wheat. 316, 436-437, it was said:

"If we measure the power of taxation residing in a state by the extent of sovereignty which the people of a single state possess, and can confer on its government, we have an intelligible standard applicable to every case to which the power may be applied. * * * We are not driven to the perplexing inquiry, so unfit for the judicial department, what degree may amount to the abuse of the power."

It can scarcely be suggested that this Court's omission in the *Bekins* case, supra, to reverse or in any respect modify the historic doctrine of reciprocal immunity, constitutes an abandonment of the countless decisions adhering steadfastly to that principle, as follows:

"* * * as to the power to borrow money neither the United States on the one hand, nor the States on the other, can interfere with that power as possessed by each and an essential element of the sovereignty of each."

Pollock v. F.L.&T. Co., 157 US 429.

In *Cheathem v. Norvekl*, 92 US 561, it was said:

"All governments, in all times, have found it necessary to adopt stringent measures for the collection of taxes, and to be rigid in the enforcement of them. * * * In this country, this system for each State or for the Federal government provides safeguards of its own against mistakes, injustice or oppression, in the administration of its revenue laws. That system is intended to be complete. * * * If there existed in the Courts, State or National, any general power of impeding or controlling the collection of taxes, or relieving

> the hardship incident to taxation, the very existence of government might be placed in the hands of a hostile judiciary."

It has never been held by this Court that a State can constitutionally escape the fulfillment of its duty to assess and collect the taxes, rents, issues and profits of land within the domain of the State, as promised by applicable statutes securing money borrowed by the State, or a political subdivision thereof.

In *Von Hoffman v. Quincy,* 4 Wall. 535, this Court said:

> "* * * the legislature could not forbid the levy of assessments to pay the bonds or reduce their amount."

In *Murray v. Charleston,* 96 US 432, it was said:

> "But until the payment of the debt or interest has been made, as stipulated, we think no act of State sovereignty can work an exoneration from what has been promised to the creditor; namely payment to him, without a violation of the Constitution."

The bonds at bar are statutory tax-anticipation trust obligations, and this Court has held that taxes are not debts. *Mo. v. Ross,* 299 US 72.

The nature and source of any claim "is an important factor to be considered in the determination of the debtor's eligibility to a discharge under the Bankruptcy Act." *Smith v. White,* 166 F.2d 269 (CCA 9).

In *Buckout v. N. Y.*, 68 NE 659, 661, it was said:

"Taxation can not create debt until there is a tax fixed in amount and perfected in all respects."

In *Miller v. City of Greenville,* 138 F.2d 712, it was said:

"It is not federal court's function to interfere with assessment and levy of State property taxes."

In *Brick v. McColgan,* 39 F. Supp. 358, 364, it was said:

"An injunction restraining the collection of taxes in a state court—a stay not being authorized by any law relating to bankruptcy, is prohibited by § 265 Jud. Code, 28 U.S.C.A. § 379."

In *Wall v. Chicago Park Dist.,* 37 NE(2d)752, it was said:

"A municipal obligation created by a special assessment upon property benefited by proposed improvement would not be a 'debt' within contemplation of Constitutional limitation upon municipal debt."

In *Heine v. Lev. Comm.,* 19 Wall. 655, it was said:

"It is not only not one of the inherent powers of the Court to levy and collect taxes, but it is an invasion by the judiciary of the federal government of the legislative functions of the state government."

In *Rancho Santa Anita v. Arcadia,* 20 Cal.(2d)475 it was said:

"In absence of constitutional or statutory limitations, amount of revenue necessary for needs of a municipality is within sole discretion of legislative authorities and this discretion is not subject to judicial interference."

In *Harvey v. Radcliffe,* 41 Atl.(2d)455 it was said:

"A contract made by the U. S. Government in the exercise of its power to borrow money is independent of the will of any State * * *".

In *Skaggs v. Comm.,* 122 F.(2d)721 it was said:

"It is universally held that real or immovable property is exclusively subject to the law of the country or state in which it is situated, and *no interference* with it by the law of any *other* sovereignty is permitted." (Italics added.)

Certiorari was denied by this Court in 315 US 811.

In *Petition of S.R.A.,* 18 NW(2d)442, Affirmed in 327 US 558, it was said:

"The private holder of land never enjoys tax immunity as a right but only as an incidental windfall when, and only as long as, the imposition of a State tax in some way impairs, or interferes with the exercise of a federal function."

In *Wulff Hansen v. Silvers,* 21 Cal.(2d)253, it was said:

"The law places such duty on the tax collector and the city cannot hide behind the failure of a city officer to perform a duty imposed upon him by law."

In *Lubezny v. Ball,* 59 NE(2d)645, it was said:

> "A tax anticipation warrant issued against school district taxes is simply an assignment of tax money which directs the treasurer to pay the holder, and does not present an analogous situation as respects special assessment bonds, since no debt is created by an anticipation warrant, and, after delivery there is no future obligation upon it, either absolute or contingent, to pay out anything except the levy anticipated, when collected."

Petitioner's claim, in this case, has likewise been construed and applied by the Supreme Court of California as analogous with the tax anticipation warrants, supra. The California decisions are:

Provident v. Zumwalt, 12 Cal.(2d)365;
El Camino v. El Camino, 12 Cal.(2d)378;
Moody v. Provident, 12 Cal.(2d)389.

A few other decisions establishing the nature and source of claims arising under the same law as the bonds at bar, are:

Fallbrook I.D. v. Bradley, 176 US 112;
Tregea v. Modesto I.D., 164 US 179;
Tulare I.D. v. Shepard, 185 US 1;
Stimson v. Alessandro I.D., 135 Cal. 389;
Baxter v. Vineland I.D., 136 Cal. 185;
Ham v. Grapeland I.D., 172 Cal. 611;
Boskowitz v. Thompson, 144 Cal. 724;
Dougherty v. Bettencourt, 213 Cal. 514;
Herring v. Modesto I.D., 95 Fed. 705;

Wores v. Imperial I.D., 193 Cal. 609;
Shouse v. Quinley, 3 Cal. (2d) 357;
Bates v. McHenry, 123 Cal. App. 81;
Selby v. Oakdale I.D., 140 C. A. 171;
Meyerfeld v. S. San Joaquin I.D., 3 Cal. (2d) 409.

The controlling decisions, as to both the substantive and procedural rights of petitioner hold, without any exception that it is the duty of a federal Court to ascertain and apply the State law where, as here, State law controls both the powers and duties of respondent, and the vested rights of petitioner who is guaranteed the right to have enforced the assessment and collection of land-value taxes, ground rent, and other sources of revenue as promised when the bond contract was made, in 1917 and 1920. (R. 25, No. 306.) This right is stated in 44 Corp. Jur. p. 1237, 1238.

The cases holding that State law controls the duties and rights of the State and persons holding statutory claims upon land, whenever involved in a Federal Bankruptcy proceeding, are:

Ashton v. Cameron County, 298 US 513;
Brush v. Comm., 300 US 352, 366;
U. S. v. Bekins, 304 US 27;
Arkansas Corp. v. Thompson, 313 US 132;
Bankers Tr. Co. v. N. Y., 323 US 714;
Meredith v. Winter Haven, 320 US 228;
Guaranty Tr. Co. v. York, 326 US 99;
Vanston Bdhrs. Comm. v. Green, 329 US 156;
Gardner v. N. J., 329 US 565.

In the *Bekins* case, supra, this Court said:

> "The reservation to the States by the 10th amendment protected and did not destroy, their right to make contracts and give consents *where that action would not contravene the provisions of the Federal Constitution.*" (Emphasis supplied.)

It is not contended, or even suggested by respondent that there was any provision in any California law when the bond contract was made allowing it to submit its statutory duties to federal regulation, control or veto, directly or indirectly. In 26 Cal. Jur., p. 403 it is said, "An Irrigation District has only such powers as are given it by law, and must exercise those powers conferred, in the manner prescribed." This limitation was construed and applied where other attempts were made which, if allowed, would have contravened Constitutional provisions.

Selby v. Oakdale I.D., supra;
Shouse v. Quinley, supra;
Meyerfeld v. South San Joaquin I.D., supra;
Provident v. Zumwalt, supra.

The bonds owned by petitioner were issued in 1917 and 1920, and it was not until 1939 that California enacted the statute which pretended to give consent. But, this Ch. 72, Stats. 1939 conferred on the United States no authority to modify, or enjoin the statutory rights of the holders of pre-existing contracts. To have attempted such consent would have contravened the following Constitutional provisions:

> "The power of taxation shall never be surrendered or suspended by any grant or contract to

which the State shall be a party." (Art. XIII, sec. 6.)

"No injunction * * * or other legal or equitable process shall ever issue in any suit, action or proceeding against this State, or any officer thereof, to prevent or enjoin the collection of any tax levied under the provisions of this article; * * *". (Art. XIII, Sec. 15.)

No provisions in the laws governing the duties and powers of respondent, or the rights of petitioner (Stats. 1897, p. 254 as amended) are amended or suspended by this 1939 statute, and repeals by implication are never favored. *U. S. v. Borden Co.,* 308 US 188.

In *La. v. New Orleans,* 215 US 170 it was said:

"The Legislature of a State can not take away rights created by former legislation for the security of debts owing by a municipality of the State or postpone indefinitely the payment of lawful claims until such time as the municipality is ready to pay them."

In *State v. Village of Brooklyn,* 49 NE (2d) 684 it was said:

"Legislature can not impair or modify contractual obligation of a village under its bonds without the consent of bondholders, non-consenting bondholders' rights, after enactment of Gallagher Act remained as they were under bonds, as originally issued."

In 43 Corp. Jur., p. 211 it is said:

> "As the State may not, by any law or contract, surrender or restrict any portion of the sovereignty which it holds in sacred trust for the public weal, so a municipal corporation, as a governmental agency, can not surrender or contract away its governmental functions and powers, nor such functions as are regarded as mandatory, and any attempt to barter or surrender them is invalid."

Thus, a State can not constitutionally abdicate its duty as trustee of restricted land in which all persons have an equal and unalienable right and interest, such as the land within the Paradise Irrigation District, any more than the State can surrender its police power to veto by another sovereign. When such interference by another sovereign involves the rights of persons who have made valid loans to the State or to its local governments, this Court has steadfastly disallowed such attempts, in the cases above cited.

In *Arkansas Corp. v. Thompson,* 312 US 673 it was said:

> "But there is nothing in the history of bankruptcy or reorganization legislation to support the theory that Congress intended to set the Federal Court up as super-assessment agencies over State taxes."

That the power of a State to assess and enforce the collection of ad-valorem land taxes is a *paramount sovereign power* was held by the Pennsylvania Supreme Court in *Day v. Ostergard,* 21 A. (2d) 586, 588.

That the sovereign power of the States to tax land, when exercised would remain "independent and uncontrollable" in "the most absolute and unqualified sense" after the adoption of the U. S. Constitution was expressly agreed to by Hamilton, in Federalist Essays, Nos. XII, XXX to XXXVI. In *Coyle v. Smith,* 221 US 559, 572 is an interpretation of the futility of an attempt by a State to add to the powers of the Congress.

In *International Shoe Co. v. Pinkus,* 278 US 261 it was said:

> "The National purpose to establish uniformity necessarily excludes State regulation * * * States may not pass or enforce laws to interfere with or complement the Bankruptcy Act or to provide additional or auxiliary regulations."

A contrary view from that laid down in the *Pinkus* case, supra, is expressed by Mr. Justice Jackson, in his book, "The Struggle for Judicial Supremacy", at page 168, as follows:

> "In the Municipal Bankruptcy (11 USCA 401-403) case, the states went further and legislated to enable their subdivisions to take advantage of the federal law; the states could withdraw their authorization at any time *and so make the federal law inoperative."* (Italics added.)

That the powers allowed the United States can not be added to or diminished by the consent or submission of a State, is settled.

Kohl v. U. S., 91 US 371;
U. S. v. Butler, 297 US 1;

Carter v. Carter Coal Co., 298 US 238;
Ashton v. Cameron County, 298 US 513;
U. S. v. Carmack, 67 S. Ct. 252.

In *Ableman v. Booth*, 21 How. 506, 516, it was said:

> "* * * the powers of the General government, and of the State, although both exist and are exercised within the same territorial limits, are yet separate and distinct sovereignties, acting separately and independently of each other within their respective spheres."

The unauthorized action of the Court below, consists in the entry of an order enjoining proceedings in the California Court to compel respondent to perform a "plain official duty," which injunction has the force and effect of protecting responsible tax officials who have ever since 1935 failed, neglected and refused to perform, as required by the applicable State law the governmental powers and duties confided to them. Under the provisions of 11 USCA 403 (c) (i), the base of this action, any and all right to "interfere" with any governmental powers is expressly denied the Bankruptcy Court.

This inhibition against any such orders which "interfere" with the political or governmental affairs of petitioners seeking to invoke Chap. IX of the Bankrutcy Act, is discussed in the following cases:

Spellings v. Dewey, 122 F.(2d) 652 (CCA 8);
Green v. City of Stuart, 135 F.(2d) 33 (CCA 5);
Leco Prop. Co. v. Crummer & Co., 128 F. (2d) 110 (CCA.5);

Mission S. D. v. Texas, 116 F.(2d) 17, (CCA5);
Faitoute v. Asbury Park, 316 US 502.

Respondent has cited no decision by this Court interpreting the inhibitions in 11 USCA 403 (c) (i), or even suggesting that the provisions in Sec. 64a, 67b of Bankruptcy Act, or the other federal statutes shown in the petition at p. 22, are inapplicable when proceedings are brought under Chap. IX.

In 11 USCA § 35, it is provided "a. A discharge in bankruptcy shall release a bankrupt from all of his provable debts, * * * except such as (1) are due as a tax levied by the United States, or a state, county, *district,* or municipality * * *".

The situation here, is that the alleged bankrupt is never a taxpayer, but always a tax collector, the alter ego of the State.

Anderson Cottonwood I.D. v. Klukkert, 13 Cal. (2d) 191;
Cowan v. Fallbrook, 131 F.(2d) 513 (CCA 3). (Cert. denied 320 US 735.)

Therefore the injunctive provision in the final decree complained of must presuppose that the decree deals with parties and pecuniary interests in respect of which the Court has been delegated unrestricted jurisdiction.

Chap. IX also expressly denies the Bankruptcy Court any authority to issue any order or decree, unless it is allowed by the bankrupt. 11 USCA 403 (e). It is submitted that the Final Decree below, as applied, affects adversely the claim of petitioner,

which is in no respect a contract between persons, but a tax anticipation trust obligation, bottomed upon the Constitution and laws of California which are still in full force and effect. Because of its nature the claim is protected from federal impairment by the 5th and 10th amendments to the U. S. Constitution, and the final decree therefore deals with State affairs which under no circumstances can be vetoed by any permanent injunction which any Federal Court may lawfully enter.

In *Anderson-Cottonwood v. Zinzer,* 51 Cal. App. (2) 589 (1942) the California Court construes and applies the delegated taxing power of the State in a long and well reasoned opinion, in which the law securing the claim of petitioner, and the law governing and controlling the devolution of privately held title deeds to taxable land within such districts is extensively explored. An appeal taken to the California Supreme Court was denied June 25, 1942.

In Canada the 1929 slump also involved local governments in fiscal difficulties, including Irrigation Districts. In *Board of Trustees, Lethbridge Northern Irr. Dist. v. I. O. F.,* 2 D.L.R. 273 (1940) the Court held the statute involved *ultra vires.* In *Ladore v. Bennett,* 3 D.L.R. 1, A.C. 468 (1939) the Court said:

> "The Province (Ontario) has *exclusive legislative power* in relation to (s.92 (8)) Municipal Institutions in the Province. Sovereign within its constitutional powers the Province is charged with the local government of its inhabitants by means of municipal institutions." (Italics added.)

In *Reference re Debt Adjustment Act* 1937, 1 D.L.R. 1, (1942) the Supreme Court of Canada held *ultra vires* certain laws enacted by the Province of Alberta. In *Plourde v. Roy,* 1 D.L.R. 426 (1942) the Alberta Supreme Court disallowed a law involving payment of land debts, on the ground that it was *ultra vires.*

In *Hagan v. Recl. District* 108, 111 US 701 it was said:

> "The construction of the statutes and Constitution of a State as to political or taxing instrumentalities of such State are emphatically matters of State law on which the decisions of the State Courts are conclusive, and must be followed by the Federal Courts."

In Civil Code, Div. 4, part 1, title 3, ch. 3, § 3423, it is said:

> "When injunctive relief may not be granted—(7) To prevent a legislative act by a municipal corporation." (Stats. 1925, p. 829.)

In *U. S. v. Aho,* 68 F. Supp. 358 and *U. S. v. Florea,* 68 F. Supp. 367, are learned interpretations of the history, force and effect of such land taxes and assessments as secure the claim of petitioner, going far back into English history. Even land acquired by the King of England was not immune from this species of assessment.

It was pointed out in the instant petition, and not denied by respondent, that any Federal tax imposed on interest received by petitioner from the bonds at bar would be repugnant to the Constitution. Two

opinions by the Attorney General of the U. S. adopt this principle, as follows, *30 Atty. Gen. Ops. 252* (1914); *38 Atty. Gen. Ops. 563* (1937). These opinions were discussed in the dissenting opinion by Mr. Justice Frank, in *Comm. v. Shamberg,* 144 F.(2d) 998 (CCA 2) (1944). Despite the fact that neither New York nor New Jersey had delegated any authority to the Port of N. Y. Authority to exercise the State's sovereign power to tax land values, the immunity of such obligations from Federal taxation was allowed, and this Court denied Petition for a Writ of Certiorari.

Therefore, if the final decree as applied by the Court below is allowed to stand, and the Federal Legislature, by simple statute is allowed to deprive petitioner of all the interest lawfully payable to him, plus taking about 50% of bond principal, although a Federal tax which would deprive him of only a portion of the same interest is not lawful, has not a higher dignity and importance been given the Bankruptcy clause, than is being given the Federal tax clause? In view of the size of the Federal debt, and the relative smallness of the debts of the States and their local tax bodies, such inconsistency in respect of these two federal powers can not make for economic or political equilibrium.

In Senate Document No. 69, 78 Cong. 1st Sess., "Federal, State and Local Fiscal-Relations" is a 576 page report transmitted in response to S. Res. 160. The comments on "Centralization v. Decentralization" at p. 176, and "Jurisdiction to tax as defined

by the Judiciary", at p. 235 in this Report, have a direct relevancy to the bottom question here.

In *Monaco v. Mississippi,* 292 US 313 this Court said:

> "Behind the words of the Constitutional provisions are postulates which limit and control. There is the essential postulate that the controversies, as contemplated, shall be found to be of a justiciable character."

In *Providence Bank v. Billings,* 4 Pet. 514 it was said:

> "Whatever may be the rule of expediency, the constitutionality of a measure depends not on the degree of its exercise, but on its principle."

The following are passages from the book *"Social Problems"* by Henry George, written in 1883, which discuss briefly the economic, sociological and political effects of direct ad-valorem land taxes, and the exemption of improvements from the tax, as is provided in the California statute forming the base of the duties and rights of the parties in this proceeding. (Stat. 1917, p. 764; Stat. 1943, Ch. 368, secs. 25500, 25501.)

> "Do what we may, we can accomplish nothing real and lasting until we secure to all the first of those equal and unalienable rights with which, as our Declaration of Independence has it, man is endowed by his Creator—*the equal and unalienable right to the use and benefit of natural opportunities.*
>
> There are people who are always trying to find some mean between right and wrong—people who,

if they were to see a man about to be unjustly beheaded, might insist that the proper thing to do would be to chop off his feet. These are the people who, beginning to recognize the importance of the land question, propose the limitation of estates.

Nothing whatever can be accomplished by such timid, illogical measures. If we would cure social disease we must go to the root.

There is no use in talking about restricting the amount of land any one man may hold. That, even if it were practicable, were idle, and would not meet the difficulty. The ownership of an acre in a city may give more command of the labor of others than the ownership of a hundred thousand acres in a sparsely settled district, and it is utterly impossible by any legal device to prevent the concentration of land so long as the general causes which irresistibly tend to the concentration of land remain untouched.

* * * * * * *

If there seems anything strange in the idea that all men have equal and unalienable rights to the use of the earth, it is merely that habit can blind us to the most obvious truths. Slavery, polygamy, cannibalism, the flattening of children's heads, or the squeezing of their feet, seem perfectly natural to those brought up where such institutions or customs exist. But, as a matter of fact, nothing is more repugnant to the natural perceptions of men than that land should be treated as subject to individual ownership, like things produced by labor; nor has it ever obtained save as the result of a long course of usurpation, tryanny and fraud. This idea reached development among

the Romans, whom it corrupted and destroyed. It took many generations for it to make its way among our ancestors; and it did not, in fact, reach full recognition until two centuries ago, when, in the time of Charles II, the feudal dues were shaken off by the landholders' parliament. We accepted many other things, in which we have servilely followed European custom. Land being plenty and population sparse, we did not realize what it would mean when in two or three cities we should have the population of the thirteen colonies. But it is time that we should begin to think of it now, when we see ourselves confronted, in spite of our free political institutions, with all the problems that menace Europe, we have a 'working-class,' a 'criminal class' and a 'pauper class;' when there are already thousands of so-called *free* citizens of the Republic who cannot by the hardest toil make a living for their families, and when we are, on the other hand, developing such monstrous fortunes as the world has not seen since great estates were eating out the heart of Rome.

WHAT MORE PREPOSTEROUS

What more preposterous than the treatment of land as individual property? In every essential land differs from those things which being the product of human labor are rightfully property. It is the creation of God; they are produced by man. It is fixed in quantity; they may be increased illimitably. It exists, though generations come and go; they in a little while decay and pass again into the elements. What more preposterous than that one tenant for a day of this rolling sphere should collect land rent for it from

his co-tenants, or sell to them for a price what was here ages before him and will be here ages after him? What more preposterous than that we should be working for a lot of landlords who got the authority to live on our labor from some English king, dead and gone these centuries? What more preposterous than that we, the present population of the United States, should presume to grant to our own people or to foreign capitalists the right to strip of their earnings American citizens of the next generation? What more utterly preposterous than these titles to land? *Although the whole people of the earth in one generation were to unite, they could no more sell title to land against the next generation than they could sell that generation.* It is a self-evident truth, as Thomas Jefferson said, that the earth belongs in usufruct to the living.

Nor can any defense of private property in land be made on the ground of expediency. On the contrary, look where you will, and it is evident that the private ownership of land keeps land out of use, that the speculation it engenders crowds population where it ought to be more diffused, diffuses it where it ought to be closer together; compels those who wish to improve to pay away a large part of their capital, or mortgage their labor for years, before they are permitted to improve; prevents men from going to work for themselves who would gladly do so, crowding them into deadly competition with each other for the wages of employers; and enormously restricts the production of wealth while causing the grossest inequality in its distribution.

No assumption can be more gratuitous than that constantly made that absolute ownership of land is necessary to the improvement and proper use of land. What is necessary to the best use of land is the security of improvements—the assurance that the labor and capital expended upon it shall enjoy their reward. This is a very different thing from the absolute ownership of land. Some of the finest buildings in New York are erected upon leased ground. Nearly the whole of London and other English cities, and great parts of Philadelphia and Baltimore, are so built. All sorts of mines are opened and operated on leases. In California and Nevada the most costly mining operations, involving the expenditure of immense amounts of capital, were undertaken upon no better security than the mining regulations, which gave no ownership of the land, but only guaranteed possession as long as the mines were worked.

If shafts can be sunk and tunnels can be run, and the most costly machinery can be put up on public land on mere security of possession, why could not improvements of all kinds be made on that security? If individuals will use and improve land belonging to other individuals, why would they not use and improve land belonging to the whole people? What is to prevent land owned by Trinity Church, by the Sailors' Snug Harbor, by the Astors or Rhinelanders, or any other corporate or individual owners, from being as well improved and used as now, if the *ground-rents,* instead of going to corporations or individuals, went into the public treasury?

In point of fact, if land were treated as the common property of the whole people, it would

be far more readily improved than now, for then the improver would get the whole benefit of his improvements. Under the present system, the price that must be paid for land operates as a powerful deterrent to improvement. And when the improver has secured land either by purchase or by lease, he is taxed upon his improvements, and heavily taxed in various ways upon all that he uses. Were land treated as the property of the whole people, the ground-rents would accrue to the community.

To secure to all citizens their equal right to the land on which they live, does not mean, as some of the ignorant seem to suppose, that every one must be given a farm, and city land be cut up into little pieces. It would be impossible to secure the equal rights of all in that way, even if such division were not in itself impossible. In a small and primitive community of simple industries and habits, such as that Moses legislated for, substantial equality may be secured by alloting to each family an equal share of the land and making it unalienable. But among a highly civilized and rapidly growing population, with changing centers, with great cities and minute division of industry, and a complex system of production and exchange, such rude devices become ineffective and impossible.

Must we therefore consent to inequality—must we therefore consent that some shall monopolize what is the common heritage of all? If two men find a diamond, they do not march to a lapidary to have it cut in two. If three sons inherit a ship, they do not proceed to saw her into three pieces; nor yet do they agree that if this cannot be done

equal division is impossible. And so it is not necessary, in order to secure equal rights to land, to make an equal division of land. All that it is necessary to do is to *collect the ground-rents for the comman benefit.*

Nor, to take *ground-rents* for the common benefit, is it necessary that the state should actually take possession of the land and rent it out from year to year, or from term to term, as some ignorant people suppose. It can be done in a much more simple and easy manner by means of the existing machinery of taxation. All it is necessary to do is to rest taxation upon the value of land irrespective of improvements, and take the *ground-rent* for the public benefit.

* * * * * * *

In a book such as this, intended for the casual reader, who lacks inclination to follow the close reasoning necessary to show the full relation of this seemingly simple reform to economic laws, I cannot exhibit its full force, but I may point to some of the more obvious of its effects.

* * * * * * *

To appropriate ground-rent* to public uses by means of taxation would enormously increase the production of wealth by throwing open natural opportunities. It would make the holding of land unprofitable to any but the user. There would be no temptation to any one to hold land in expectation of future increase in its value when that increase was certain to be demanded in taxes. No

*I use the term ground-rent because the proper economic term, rent, might not be understood by those who are in the habit of using it in its common sense, which applies to the income from buildings and improvements, as well as land.

one could afford to hold valuable land idle when the taxes upon it would be as heavy as they would be were it put to the fullest use.

The enormous increase in production which would result from thus throwing open the natural means and opportunities of production would enormously augment the annual fund from which all incomes are drawn. It would at the same time make the distribution of wealth much more equal. That great part of this fund which is now taken by the holders of land, not as a return for anything by which they add to production, but because they have appropriated as their own the natural means and opportunities of production, and which as material progress goes on, and the value of land rises, is constantly becoming larger and larger, would be virtually divided among all, by being utilized for common purposes. The removal of restrictions upon labor, and the opening of natural opportunities to labor, would make labor free to employ itself. Labor, the producer of all wealth, could never become 'a drug in the market' while desire for any form of wealth was unsatisfied. With the natural opportunities of employment thrown open to all, the spectacle of willing men seeking vainly for employment could not be witnessed; there could be no surplus of unemployed labor to beget that cutthroat competition of laborers for employment.

The equalization in the distribution of wealth that would thus result would effect immense economies and greatly add to productive power. The cost of the idleness, pauperism and crime that spring from poverty would be saved to the community; the increased mobility of labor, the

increased intelligence of the masses, that would result from this equalized distribution of wealth, the greater incentive to invention and to the use of improved processes that would result from the increase in wages, would enormously increase production.

* * * * * * *

'Land lies out of doors.' It cannot be hid or carried off. Its value can be ascertained with greater ease and exactness than the value of anything else, and taxes upon that value can be collected with absolute certainty and at the minimum of expense.

* * * * * * *

It is no mere fiscal reform that I propose; it is a conforming of the most important social adjustments to natural laws. To those who have never given thought to the matter, it may seem irreverently presumptuous to say that it is the evident intent of the Creator that land values should be the subject of taxation; that land rent should be utilized for the benefit of the entire community.

* * * * * * *

We may know that the natural or right way of raising the public revenues which are required by the needs of society is by the taxation of land values. The value of land is in its nature and relations adapted to purposes of taxation, just as the feet in their nature and relations are adapted to the purposes of walking. The value of land increases as the development of society goes on. Taxation upon land values does not lessen the individual incentive to production and accumulation, as do other methods of taxation; on the contrary, it leaves perfect freedom to productive

forces, and prevents restrictions upon production from arising. It does not foster monopolies, and cause unjust inequalities in the distribution of wealth, as do other taxes; on the contrary, it has the effect of breaking down monopoly and equalizing the distribution of wealth. It can be collected with great certainty and economy: it does not beget the evasion, corruption and dishonesty that flow from other taxes. In short, it conforms to every economic and moral requirement. What can be more in accordance with justice than that the value of land, which is not created by individual effort, but arises from the existence and growth of society, should be taken by society for social needs?

* * * * * * *

This is the law of [land] rent: As individuals come together in communities, and society grows, there arises, over and above the value which individuals can create for themselves, a value which is created by the community as a whole, and which, attaching to land, becomes tangible, definite and capable of computation and appropriation. As society grows, so grows this value, distinguished from what is contributed by individual exertion—all social advance necessarily contributes to the increase of this common value; to the growth of this common fund.

Here is a provision made by natural law for the increasing needs of social growth. Here is a fund belonging to society as a whole from which, without the degradation of alms, private or public, provision can be made for the weak, the helpless, the aged.

* * * * * * *

FARMERS

It is not true that such measures as I have suggested are opposed to the interests of the great body of farmers. On the contrary, these measures would be as clearly to their advantage as to the advantage of wageworkers. Those who are trying to persuade him that to put taxation upon the value of land would be to put all taxation upon him, have as little chance of success as the slaveholders had of persuading their Negroes that the Northern armies were bent on kidnaping and selling them in Cuba.

* * * * * * *

The farmer who cultivates his own farm with his own hands is a landholder, it is true, but he is in a greater degree a laborer, and in his ownership of stock, improvements, tools, etc., a capitalist. It is from his labor, aided by this capital, rather than from any advantage represented by the value of his land, that he derives his living. His main interest is that of a producer, not that of a landholder.

* * * * * * *

It requires no grasp of abstraction for the working farmer to see that to abolish taxation, save upon the value of land, would be really to his interest. Let the working farmer consider how the weight of indirect taxation falls upon him without his having power to shift it off upon any one else; how it adds to the price of nearly everything he has to buy, without adding to the price of what he has to sell; how it compels him to contribute to the support of government in far greater proportion to what he possesses than it

does those who are much richer, and he will see that by the substitution of direct for indirect taxation, he would be largely the gainer. Let him consider further, and he will see that he would be still more largely the gainer if direct taxation were confined to the value of land. A tax upon the naked value of land, irrespective of improvements, would be manifestly to the advantage of the holder of improved land, and especially of small holders.

* * * * * * *

All the tendencies of the time are to the extinction of the typical American farmer—the man who cultivates his own acres with his own hands. This movement has only recently begun, but it is going on, and must go on, under present conditions, with increasing rapidity.

* * * * * * *

This tendency means the extirpation of the typical American farmer, who with his own hands and the aid of his boys cultivates his own farm."

Herbert Spencer wrote in *Social Statics* (1851 Ed. Vol. IX) as follows:

"Meanwhile, we shall do well to recollect that there are others beside the landed class to be considered. In our tender regard for the vested interests of the few, let us not forget that the rights of the many are in abeyance, and must remain so, as long as the Earth is monopolized by individuals * * *

We find that if pushed to its ultimate consequences, a claim to the exclusive possession of the

soil involves a land owning despotism. And we find lastly, that the theory of co-heirship of all men to the soil is consistent with the highest civilization; and that, however difficult it may be to embody that theory in fact, equity sternly commands that it be done."

Thomas Jefferson supported this idea, saying:

"The Earth is given a common stock for man to labor and live on, if for the encouragement of industry we allow it to be appropriated, we must take care that other employment be provided to those excluded from the appropriation.

If we do not, the fundamental right to labor the earth returns to the unemployed. It is too soon yet in our country to say that every man who can not find employment, but who can find uncultivated land, shall be at liberty to cultivate it, paying a moderate rent. But it is not too soon to provide by every possible means that as few as possible shall be without a little portion of land. The small landholders are the most precious part of the State."

(*Thos. Jefferson, Writings,* Monticello Ed., Vol. 19, p. 18.)

In *"Landownership Survey on Federal Reclamation Projects"*, issued by the Department of the Interior (Government Printing Office, 1946), in Part Three, is "The historical background of Reclamation Law and Policy with respect to excess land limitation", pp. 61 to 98, quoting not only Thomas Jefferson, as above, but Horace Greeley, numerous Popes

and other religious leaders, and excerpts from the platforms of both of our political parties, going back as far as 1860. This very important volume also tells in Part IV, *"What some other countries are doing towards control of land monopoly."* The report on Denmark's transformation from a land of feudal serfs, to one where "94 percent of the 200,000 farmers in Denmark own the farms which they operate", is noteworthy (p. 98).

The late Honorable L. L. Dennett, Chairman of the Assembly Irrigation District Committee, 1915, wrote as follows in an article headed *"Irrigation District Work Makes Arid Land Flourish"*, in the San Francisco Call and Post, Jan. 15, 1916:

> "These (Irrigation) Districts were compelled to overcome an inconceivable amount of antagonism in placing their first securities and building their systems. Now that they are practically completed, so effective has been the demonstration of their capacity, that capital is more than willing to invest in their securities. Had this sympathetic attitude existed in the beginning, it would have saved the districts many hundred thousands of dollars and years of time, but possibly the *self reliance learned by the people through all their adversity is worth all that it cost* * * * As examples of judicious State control and influence in local self government the reports (issued by the District Securities Commission, created by Stat. 1913, p. 778) are worthy models of official carefulness, indicative of a new departure in State government. As the result of such (State) examination the validity and security of the bonds of these Districts are certified to by the State Controller,

so that in moral effect such bonds have a State guarantee."

The following passage by Dr. Johnson is offered:

"Let us consider, my Lords, that arbitrary power has seldom or never been introduced into any country at once. It must be introduced by slow degrees, and as it were, step by step, lest the people should see its approach. The barriers and fences of the people's liberty must be plucked one by one, and some plausible pretence must be found for removing or hoodwinking, one after another, those sentries who are posted by the Constitution of a free country, for warning the people of their danger. When these preparatory steps are once made, the people may then, indeed, with regret, see slavery and arbitrary power making long strides over their land; but it will be too late to think of preventing or avoiding the impending ruin." (*U. S. Law Jrnl.*, p. 284, May, 1939.)

Petitioner has filed many petitions in this Court, since his Counsel filed "Brief of Amici Curiae in opposition to Motion for Rehearing" after decision in the *Ashton v. Cameron County case,* No. 859, October term, 1935 (298 US 513). The basic principles and cases cited in that brief are the same as those presented and relied upon in all petitioner's other briefs, since the amended Chap. IX (11 USCA 401-403) created an opportunity for the filing of new petitions by the same political subdivisions, which were denied their Petition for a Rehearing, after the *Ashton* decision, supra.

Although all appeals from the Final Decrees entered under the amended Ch. IX have been denied by this Court, which petitioner greatly regrets, he does not regret the opportunity these petitions have afforded him to try and defend the equal and unalienable rights of all persons to acquire, use, occupy and hold land, as enunciated by this Court in *Shelley v. Kraemer,* 334 US 1, and recognized more recently by the California Supreme Court in *Perez v. Lippold,* 32 Adv. Cal. Reports, p. 757. (Oct. 1, 1948.) In that case the California Court disallowed Stats. 1850, ch. 140, p. 424, and in the learned concurring opinion by Mr. Justice Carter (pp. 777, 785) he reviews the earlier views on human rights and slavery announced by this Court, and concludes:

> "In my opinion, the statutes here involved violate the very premise on which this country and its Constitution were built, the very ideas embodied in our Declaration of Independence, the very issue over which the Revolutionary War, the Civil War, and the Second World War were fought, and the spirit in which the Constitution must be interpreted in order that the interpretations will appear as 'Reason in any part of the World besides.' "

In *Poindexter v. Greenhow,* 114 U.S. 269, this Court said:

> "Of what avail are written constitutions if their limitations and restraints upon power may be over-passed with impunity by the very agencies created and appointed to guard, defend and enforce them? * * * How else can these principles of individual liberty and right be maintained if,

when violated, the judicial tribunals are forbidden to visit penalties upon individual offenders, who are the instruments of wrong, whenever they interpose the shield of the State? The doctrine is not to be tolerated. The whole frame and scheme of the political institutions of this country, State and Federal, protest against it. It is the doctrine of absolutism, pure, simple and naked; and of communism, which is its twin; the double progeny of the same evil birth."

President Truman said:

"Local self government took upon itself in our early history the work of social advance, freed education, and open statutory agreements, which contributed so much to the building of the American character. This work should and must be furthered."

(*Bond Buyer,* NY, Dec. 7, 1946, p. 2.)

Respondent has offered no denial or comment on the following:

"The California Irrigation District Act is a land law, the full operation of which could never infringe the equal right of all persons to acquire, use and hold land, guaranteed by the 14th amendment, as recently construed by this Court in the *Shelley v. Kraemer* case. But, the decree below, if it stand, will only serve to make this non-discriminatory land law discriminatory * * *". (Brief, p. 37; Reply Brief, pp. 3, 4.)

The bottom question, raised in this petition in the form of an actual controversy, is whether the Federal Legislature may enact a valid statute authorizing its

Courts to enter such a permanent, coercive injunction as is written into the Final Decree by the Court below, which is in clear conflict with the fundamental law, as adhered to steadfastly by this Court in the cases cited herein.

In the *Ashton* case, supra, it was said:

> "Our special concern is with the existence of the power claimed—not merely the immediate outcome of what has already been attempted. And it is of the first importance that due attention be given to the results which might be brought about by the exercise of such a power in the future."

SUMMARY.

The final decree, as applied by the Court below:

1. Permanently enjoins suits to compel State officials to perform governmental powers and duties, required by irrepealable law and paramount provisions in the Federal and California constitutions.

2. Allows petitioner's money *in custodia legis* to be given respondent, without warrant of law.

3. Amounts to summary, coercive Federal impairment of petitioner's statutory and inexpugnable claim of right, never in the custody of the Court.

4. Supersedes the final decree and judgment of October 28, 1936, which is *res judicata* and which bars this second proceeding, begun in November, 1937.

5. Impinges the doctrine of reciprocal immunity, as steadfastly construed and applied by this Court.

PRAYER.

Wherefore, it is respectfully submitted that this Petition for a Rehearing be allowed, that a Writ of Certiorari be issued out of and under the seal of this Court as prayed in the Petition herein, to the end that the permanent injunction, as applied in the Final Decree by the District Court, may be considered, and that the rights reserved to petitioner by the Constitution of the United States and the State of California be protected, that the judgment of the Court below be reversed; and for such other and further proceedings as to this Court seem just and proper.

Dated, San Francisco, California,
October 22, 1948.

J. R. MASON,
Petitioner Pro se.

CERTIFICATE.

I do hereby declare the foregoing petition for a rehearing of this cause is presented in good faith and not for delay, and that it is restricted to the grounds specified.

Dated, San Francisco, California,
October 22, 1948.

J. R. MASON,
Petitioner Pro se.